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OFFICE OF PETITIONS

In re Application of :
Clark et al. :
Application No.: 09/841,314 : **DECISION ON**
Filing or 371(c) Date: 04/24/2001 : **PETITION**
Attorney Docket Number: LINCP103US :

This is a decision in response to the Petition Under 37 CFR 1.137(b), filed August 10, 2006. The petition requests revival of the application and waiver of the petition fee. The petition is properly treated under 37 CFR 1.181 (no fee), and alternatively under 1.137(b).

This Petition under 37 CFR 1.181 is **dismissed**.

The petition under 37 CFR 1.137(b) is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed September 29, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

Applicant filed a reply/amendment on November 8, 2005; however, the amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed July 27, 2006. No complete and proper reply having been received, the application became abandoned on December 30, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Petition under 37 CFR 1.181

Applicant requests waiver of the petition fee and in support of this requests asserts that the reply to the Office action filed November 8, 2005, was believed to place the application in condition for allowance. Applicant avers that he received no further communication from this Office until the mailing of the Advisory Action on July 27, 2006.

Applicant states that the Examiner agrees that the delay in mailing the Advisory Action was an error and that the abandonment of the application was due to an Office error.

Applicable Law, Rules and MPEP

The MPEP 706.07(f), Time for reply to a final rejection, explains that

The time for reply to a final rejection is as follows:

(A) All final rejections setting a 3-month shortened statutory period (SSP) for reply should contain one of form paragraphs 7.39, 7.40, 7.40.01, 7.40.02, 7.41, 7.41.03, 7.42.03, 7.42.031, or 7.42.09 advising applicant that if the reply is filed within 2 months of the date of the final Office action, the shortened statutory period will expire at 3 months from the date of the final rejection or on the date the advisory action is mailed, whichever is later. Thus, a variable reply period will be established. If the last day of "2 months of the date of the final Office action" falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, and a reply is filed on the next succeeding day which is not a Saturday, Sunday, or a Federal holiday, pursuant to 37 CFR 1.7(a), the reply is deemed to have been filed within the 2 months period and the shortened statutory period will expire at 3 months from the date of the final rejection or on the mailing date of the advisory action, whichever is later (see MPEP §710.05). In no event can the statutory period for reply expire later than 6 months from the mailing date of the final rejection.

MPEP 711.03(c)

Analysis and conclusion

A review of the Office action reveals that this language was also included therein on page five (5). In view of the above, the request for a refund of the petition fee is dismissed.

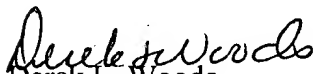
The petition to revive under 37 CFR 1.137(b)

Applicant has file a Request for Continued Examination and fee, and a submission in the form of an Amendment with the present petition. Accordingly, the petition is granted.

The petition fee has been charged to deposit account 50-1063 as authorized in the petition.

The application is being referred to Technology Center Art Unit 2617 for continued processing in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
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Office of Petitions